

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:**    **Comptroller**

**AGENDA DATE:**    **6/7/05**

**CONTACT PERSON/PHONE:**    **Carmen Arrieta-Candelaria/541-4293**

**DISTRICT(S) AFFECTED:**    **Citywide**

**SUBJECT:**

Revised resolution authorizing the acceptance of approximately \$5.8 million from the El Paso Electric Company provided that the City Council consider, in good faith, awarding a portion of the Palo Verde Performance Rewards to Project Bravo and; provided further that the City allocate the rest of the funds for projects that fall within the definition of demand-side management.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

In light of Council discussion and feedback, a new resolution has been prepared and additional documentation has been provided to City Council. The revised resolution proposes that the City accepts approximately \$5.8 million from the El Paso Electric Company, provided that the City Council consider, in good faith, awarding a portion of the Palo Verde Performance Rewards to Project Bravo and; provided further that the City allocate the rest of the funds for projects that fall within the definition of demand-side management as set forth in the Final Order of Docket No. 20450.

**PRIOR COUNCIL ACTION**

**Has the Council previously considered this item or a closely related one?**

This is a continuing item from past meetings.

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

This item will be funded from funds received from the El Paso Electric Company and said funds will flow into the City upon the approval of the resolution. All projects to be funded out of the Palo Verde Performance Rewards will be brought forward for Council approval. Subsequently, budget transfers will be submitted for approval.

**BOARD / COMMISSION ACTION:**

**Enter appropriate comments or N/A**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:**

(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## **RESOLUTION**

**WHEREAS**, the City of El Paso (the “**City**”) is entitled to an award from the El Paso Electric Company (“**EPE**”) of approximately \$5,822,173 for Palo Verde Performance Rewards (the “**Rewards**”) as called for in Public Utility Commission of Texas (“**PUC**”) Docket No. 20450 (the “**Docket**”);

**WHEREAS**, EPE desires to give the Rewards to the City and the City desires to accept and use the Rewards for projects that fall within the definition of “demand-side management” (defined hereinafter); and

**WHEREAS**, the definition of demand-side management as defined by the PUC Energy Efficiency Rule Subst. Rule 25.181 is “activities that affect the magnitude or timing of customer electrical usage or both.”

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF EL PASO:**

**THAT**, the City Manager is hereby authorized to accept, on behalf of the City, the Rewards; provided that City Council consider, in good faith, awarding a portion of the Rewards to Project Bravo and; provided further that the City allocate the rest of the Rewards to projects that fall within the definition of demand-side management;

**THAT**, the City Manager shall bring forward to City Council for its approval of all projects to be funded with the Rewards; and

**THAT**, the City Manager will bring forward all budget transfers necessary to allocate funds to previously approved projects for City Council approval.

**[Signature page to follow]**

*Signature Page*

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

CITY OF EL PASO

\_\_\_\_\_  
Joe Wardy  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jorge Villegas  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Carmen Arrieta-Candelaria  
Comptroller

JOE WARDY  
MAYOR

JOYCE WILSON  
CITY MANAGER

CARMEN ARRIETA-CANDELARIA  
COMPTROLLER



**CITY COUNCIL**  
SUSAN AUSTIN, DISTRICT 1  
ROBERT A. CUSHING, JR., DISTRICT 2  
ALEXANDRO LOZANO, DISTRICT 3  
JOHN F. COOK, DISTRICT 4  
PRESI ORTEGA, JR., DISTRICT 5  
PAUL J. ESCOBAR, DISTRICT 6  
VIVIAN ROJAS, DISTRICT 7  
ANTHONY W. COBOS, DISTRICT 8

COMPTROLLER'S  
DEPARTMENT

MEMORANDUM

**TO:** The Honorable Mayor and City Council Members

**FROM:** Carmen Arrieta-Candelaria  
Comptroller

**SUBJECT:** Palo Verde Performance Rewards Report

**DATE:** June 3, 2005

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The purpose of this Memorandum is to provide a comprehensive and thorough response to issues that were raised at prior City Council meetings, regarding the Palo Verde Performance Rewards ("**PV Rewards**"). The content of this Memorandum includes input from William Studer, Deputy City Manager for Financial and Administrative Services, Jorge Villegas, Assistant City Attorney, and Norman Gordon, Outside Legal Counsel.

This Memorandum is organized as follows:

- A. Timeline of Events
- B. Source of Funds
- C. Calculation of Funds
- D. Possible Uses of Palo Verde Funds
- E. Staff Rationale of Proposal
- F. Administration of Funds
- G. Relevant supporting documentation
- H. Staff Recommendations

**A. Timeline of Events**

Attached hereto is a comprehensive chronology of activities and events that have occurred with respect to the PV Rewards and the City's involvement in that process.

**B. Source of Funds**

As discussed in Norman Gordon's letter dated May 27, 2005 (the "**Gordon Opinion**"), in 1991, in Docket 8892, the Public Utility Commission of Texas (the "**PUC**") established performance standards for El Paso Electric Company ("**EPE**") and the operation of the Palo Verde Nuclear Generating Station (the "**PV Station**"). Under said standards, the ratepayers are protected in the

event the PV Station operated at a low capacity factor, and to reward EPE in the event the PV Station operated at a higher than expected capacity factor. The amount of the rewards/penalties for the PV Station operating at above/below expected capacity was based upon a calculation of the difference in fuel costs. In other words, if the PV Station were to run poorly, EPE and its customers would incur higher fuel costs than if it ran efficiently. The converse is also true. The performance standards seek to account for those fuel costs by having EPE shareholders, and not the customers bear part of the burden of increased fuel costs.

In 1999 as part of a stipulation in the Final Order of Docket 20450 (the “**Fuel Case**”), EPE agreed that instead of retaining all Palo Verde Performance Rewards it had earned during the period from January 1999 – December 31, 2004, EPE would retain only one-half for its shareholders and the other half would be spent for the following two initiatives (collectively the “**Initiatives**”):

- a. One-half to Project Care (or successor organization) to assist low-income customers of EPE in paying their utility bills (“**Project Care Initiative**”), and
- b. One-half to demand side management programs such as weatherization with a focus on programs to assist small business and commercial customers (“**DSM Initiative**”).

The measurement period was later modified in a subsequent case hat from January 1, 1999 through December 31, 2002.

Please note that Palo Verde Performance Rewards are monies that otherwise would have gone to EPE shareholders. Ratepayers have already benefited through a reduction in fuel costs of approximately \$32.9 million for the years 1999 through 2001.

**KEY POINT:** These are shareholder monies that were redirected to the Initiatives during this particular rate case. Ratepayers have already benefited through a reduction in fuel costs.

### **C. Calculation of Funds**

The following is a summary of how the \$5.8 million was calculated:

Total Palo Verde Performance Rewards Reconciled	\$19,700,000
Less: One-half to EPE Shareholders	<u>(9,850,000)</u>
Amount remaining to be distributed to the Initiatives	<u>\$9,850,000</u>
Less: One-half for Project Care Initiative	<u>\$4,925,000</u>
Amount remaining to be distributed for DSM Initiative	<u>\$4,925,000</u>

Please note that the one-half for the Project Care Initiative has already been distributed directly by EPE and, thus, these funds are not available for direction or administration by the City. The one-half for the DSM Initiative is the amount that the City can administer or direct. Interest at the PUC-prescribed rate of approximately 3-4% had increased the original amount from approximately \$4.9 million to approximately \$5.8 million.

**KEY POINT:** Only the \$5.8 million related to the DSM Initiative is available for City direction.

#### **D. Possible Uses of Palo Verde Funds**

As discussed in Jorge Villegas' memorandum dated May 31, 2005 (attached hereto) (the "*Villegas Memo*"), the PV Rewards (i.e. the \$5.8 million for the DSM Initiative) need not be used entirely to fund programs aimed at assisting small commercial customers, but they should be used for demand side management ("*DSM*") programs.. DSM is an activity that is designed to reduce the instantaneous demand of a customer on the system. Many commercial customers have both demand and energy meters. The larger charge is often the demand charge for that customer, so that a reduction in demand is a significant reduction in the customer's bill. Additionally, it is a more efficient use of resources. A wide range of options is available which would qualify as DSM Projects including:

1. Air conditioner replacement
2. Appliance replacement
3. Ceiling insulation
4. Wall Insulation
5. Floor Insulation
6. Energy-efficient windows
7. Energy-efficient lighting

The above list is not meant to be all-inclusive but to provide examples of the types of activities that fall within the DSM definition.

According to Norman Gordon's letter dated June 3, 2005 (attached hereto), any use of the \$5.8 million, which is inconsistent with the DSM definition (e.g. ratepayer rebate, payment of City debt), would have to be approved through a filing with the PUC and all parties to the original rate case would have to consent to said change.

#### **E. Staff Rationale of Proposal**

From the review of documentation from the prior administration, it was determined by City staff that preliminary discussions had vetted the idea that the Palo Verde Performance Rewards for DSM programs could be used for the Plaza Theatre. Specifically, the idea was to use said funds for the insulation, appliances, HVAC, and some electrical wiring of the Plaza Theatre. Any remaining funds would then be used to retrofit other City facilities to make them more energy efficient to lower energy costs and, consequently, save taxpayer dollars (See Chapman letter October 25, 2004 attached hereto). When this matter was presented to the City Manager in late October 2004, she assigned it to new staff.

It was City staff's understanding that these ideas had been presented and discussed with all affected parties, including EPE, and that the project needed to come to closure. EPE indicated that they would support using some of the funding for the Plaza Theatre as indicated in the Chapman letter. However, since the Plaza Theater was already being fully funded from other sources, the discussions turned to City CIP projects.

Follow-up discussions with Norman Gordon and EPE indicated that CIP projects were an allowable use of these funds under the DSM definition. CIP projects were considered as an option for various reasons including the following:

1. Preliminary discussions with EPE indicated that retrofitting City facilities was an appropriate use of these funds, which was confirmed by the Villegas Memo. ;
2. Several City projects were preliminarily identified as projects that could be funded with these funds since they seemed to qualify as DSM projects;
3. If funds were allocated to the CIP program, these funds could be used as an alternative source of funding;
4. Funds could be tied expeditiously to a project once the CIP projects was approved by Council;
5. Long-term O&M savings could be realized if City facilities were retrofitted with energy efficient measures. This is so since utility costs are budgeted in the general fund, expenses would be lower which would translate into a lower O&M tax rate;
6. Future debt would not have to be incurred for projects that required funding. (By allocating PV Rewards to capital projects, no additional debt service would have to be incurred and, thus, the debt tax burden would be reduced in the future;
7. No additional administrative costs would have to be incurred to run such a program since CIP projects normally do not carry administrative costs; and
8. At this point, the City does not have the infrastructure to adequately administer (e.g. qualification process, payment process, etc.) a program aimed at targeting low-income customers and/or small business customers.

With respect to the Project Bravo proposal, it was City staff's understanding that the interveners in the 2001 rate case had filed a Support of Settlement Agreement with the PUC with the understanding that the agreement between EPE and the Texas Legal Services Center ("**TLSC**") and Texas Ratepayers Organization to Save Energy ("**Texas Rose**") (collectively, the "**Intervenors**") would be honored. City staff worked with EPE, TLSC, Texas Rose and Project Bravo in order to prepare a preliminary proposal that would be effective September 1, 2005 through August 31, 2008. Staff believed that the intent of the PUC was that some of the monies could be used to benefit low-income customers through the Project Bravo program. Project Bravo already serves the under 125% of federal poverty guidelines group. This was a new program and did not supplant any existing program. Rather, it was directed at low to moderate-income households (i.e. households with income levels between 125% and 200% of federal poverty guidelines) that were not otherwise being served by Project Bravo.

The Project Bravo proposal also included a pilot project to help elderly and disabled clients start up and shut down their evaporative coolers and heaters. In light of the recent deaths of elderly people in the City of El Paso, City staff thought this is a very valuable aspect of the Project Bravo proposal. The administration fee that the City will pay Project Bravo is only 10%, which is within the industry standards including the Housing Authority's administration fee.

## **F. Administration of Funds**

One of the main reasons why EPE is looking to the City for the handling of the \$5.8 million is that they do not have the infrastructure in place to administer and manage such funds. The time and effort to administer the program can be quite considerable. This was confirmed with the Project Bravo proposal already being considered. It took approximately eight weeks between initial contact and preliminary proposal. Staff time to review and gain comfort that said proposal met the definition of DSM and that it could be carried out in accordance with City policies and procedures was considerable just on this one proposal. If additional proposals were considered, a lead department would have to be identified in order to qualify the programs. Outsourcing of these types of programs is an option that the City can utilize to fulfill the intent of the docket. Entities such as Project Bravo and the Housing Authority already have programs in place that may meet the DSM definition. Some of the funds, however, would most likely be used by the entities for administrative costs.

Another option is the City can direct EPE to administer the funds. Although EPE has indicated that this is a less than desirable option, it is still the City's option to choose not to administer the funds but place this burden of qualifying programs back on EPE.

## **G. Various Attachments.**

Attached hereto for your information are various documents regarding PV Rewards.

## **H. Staff Recommendations**

Based on all of the above, City staff's recommendation to City Council to accept \$5.8 million from EPE; provided that City Council intends to consider, in good faith, allocation a portion of said funds to Project Bravo and; provided further that the City allocate the rest of the funds to projects that qualify as DSM projects. If City Council is not amenable to awarding some portion of the funds to Project Bravo, then City staff recommends that City Council not accept the funds because failure to allocate funds to Project Bravo will likely result in a protest by the Interveners. In that case, City Council would request that EPE administer funds in accordance with the criteria set out by PUC. Any allocations of said funds shall be brought back to Council for approval.

If City Council decides to accept the funds with the caveat discussed above, then future fund allocations for consideration may include the following:

1. Provide a certain percentage to the Housing Authority for its purpose as outlined in their letter requesting some of the funds;
2. Retain remaining balances for uses to be determined by City Council for assistance to small commercial customers of EPE in targeted redevelopment areas; and



3. Allocate funds to City CIP projects which qualify as demand side management programs which might include but not be limited to the following:
  - (a) Water heater replacement;
  - (b) Water heater pipe insulation;
  - (c) Water heater jackets;
  - (d) Compact fluorescent lamps;
  - (e) Replacement of refrigerators, dishwashers or washing machines with “Energy Star” models;
  - (f) Air conditioner replacement;
  - (g) Ceiling insulation;
  - (h) Wall insulation;
  - (i) Solar water heating;
  - (j) Compact fluorescent lamps; and
  - (k) Various other energy saving programs.